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"I Erensia, Lina'la', Espiritu-ta"

FILED
DISTRICT COURT OF GUAM

OCT 12 2007 *nba*

JEANNE G. QUINATA
Clerk of Court

DISTRICT COURT OF GUAM

TERRITORY OF GUAM

JULIE BABAUTA SANTOS, *et al.*,
Petitioners,

-v-

FELIX P. CAMACHO, *et al.*
Respondents.

Civil Case No. 04-00006

MEMORANDUM RE: 26 U.S.C. § 7430

CHARMAINE R. TORRES, *et al.*,
Plaintiffs,

-v-

GOVERNMENT OF GUAM, *et al.*,
Defendants.

Civil Case No. 04-00038

MARY GRACE SIMPAO, *et al.*,
Plaintiffs,
-v-
GOVERNMENT OF GUAM,
Defendant.
-v-
FELIX P. CAMACHO, Governor of Guam,
Intervenor-Defendant.

Civil Case No. 04-00049

ORIGINAL

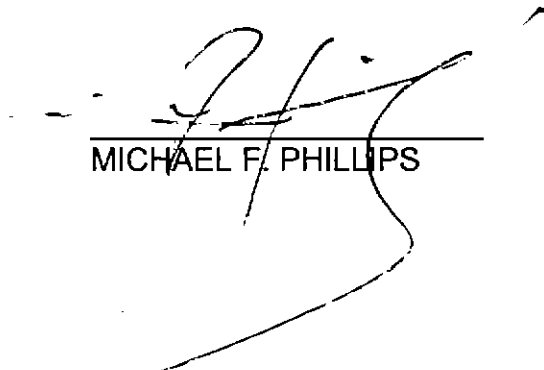
1 Interim Class Counsel Michael F. Phillips, counsel for the Petitioner, individually and on
2 behalf of the all those similarly situated, submits this Memorandum regarding 26 U.S.C. §
3 7430, as this Court directed in its order of September 13, 2007.

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5 26 U.S.C. § 7430(a) provides that “[i]n any administrative or court proceeding which is
6 brought by or against the United States in connection with the determination, collection, or
7 refund of any tax, interest, or penalty under this title, the prevailing party may be awarded a
8 judgment or a settlement for— ... (2) reasonable litigation costs incurred in connection with
9 such court proceeding.” Reasonable litigation costs are defined in section 7430(c)(1)(B)(iii) to
10 include “reasonable fees paid or incurred for the services of attorneys in connection with the
11 court proceeding, except that such fees shall not be in excess of \$125 per hour unless the
12 court determines that a special factor, such as the limited availability of qualified attorneys for
13 such proceeding, the difficulty of the issues presented in the case, or the local availability of tax
14 expertise, justifies a higher rate.”

15
16 Section 7430 does not automatically apply to all tax actions. Subsection (a) makes
17 clear that a court “may” award attorney fees under this section. Furthermore, § 7430(b) sets
18 forth limitations to the award of costs and fees under the section. For costs and fees to be
19 awarded pursuant to section 7430, a party must move for such as the award is a
20 reimbursement of costs and fees incurred by the prevailing party.

21
22 However, Plaintiffs are not moving for an award of costs and attorney fees under 26
23 U.S.C. § 7430. In fact, the Settlement Agreement between the parties specifically provides
24 that plaintiffs would not seek for the Government to pay attorney fees and costs in addition to
25 the earned income credit made to the class. Therefore, section 7430 does not presently apply.

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2 Respectfully submitted this 12th day of October, 2007.
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MICHAEL F. PHILLIPS